

309.404

Initiating official means either the contracting officer, the head of the contracting activity, the Deputy Assistant Secretary for Grants and Acquisition Management, or the Inspector General.

Suspending official means the Assistant Secretary for Management and Budget, or his/her designee.

309.404 List of Parties Excluded from Federal Procurement and Non-procurement Programs.

(c) The Office of Grants and Acquisition Management (OGAM) shall perform the actions required by FAR 9.404(c).

(4) OGAM shall maintain all documentation submitted by the initiating official recommending the debarment or suspension action and all correspondence and other pertinent documentation generated during the OGAM review.

309.405 Effect of listing.

(a) The head of the contracting activity (HCA) (not delegable) may, with the written concurrence of the debarring or suspending official, make the determinations referenced in FAR 9.405(a), regarding contracts for their respective activities.

(1) If a contracting officer considers it necessary to award a contract, or consent to a subcontract with a debarred or suspended contractor, the contracting officer shall prepare a determination, including all pertinent documentation, and submit it through acquisition channels to the head of the contracting activity. The documentation must include the date by which approval is required and a compelling reason for the proposed action. Some examples of circumstances that may constitute a compelling reason for the award to, or consent to a subcontract with, a debarred or suspended contractor include:

(i) The property or services to be acquired are available only from the listed contractor;

(ii) The urgency of the requirement dictates that the Department deal with the listed contractor; or

(iii) There are other compelling reasons which require business dealings with the listed contractor.

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(2) If the HCA decides to approve the requested action, he/she shall request the concurrence of the debarring or suspending official and, if given, shall inform the contracting officer in writing of the decision within the required time period.

309.406 Debarment.

309.406–3 Procedures.

(a) *Investigation and referral.* Whenever an apparent cause for debarment becomes known to an initiating official, that person shall prepare a report incorporating the information required by 309.470–2, if known, and forward it through appropriate channels with a written recommendation, to the debarring official. Contracting officers shall forward their reports in accordance with 309.470–1. The debarring official shall initiate an investigation through such means as he/she deems appropriate.

(b) *Decisionmaking process.* The debarring official shall review the results of the investigation, if any, and make a written determination whether or not debarment procedures are to be commenced. A copy of the determination shall be promptly sent through appropriate channels to the initiating official, and the contracting officer, if necessary. If the debarring official determines to commence debarment procedures, he/she shall, after consultation with the Office of the General Counsel, notify the contractor in accordance with FAR 9.406–3(c). If the proposed action is not based on a conviction or judgement and the contractor's submission in response to the notice raises a genuine dispute over facts material to the proposed debarment, the debarring official shall arrange for fact-finding hearings and take the necessary action specified in FAR 9.406–3(b)(2). The debarring official shall also ensure that written findings of facts are prepared, and shall base the debarment decisions on the facts as found, after considering information and argument submitted by the contractor and any other information in the administrative record. The Office of the General Counsel shall represent the Department at any fact-